IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

CIVIL APPLICATION NO.619 OF 2003

IN

SECOND APPEAL NO.433 OF 1979

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.

Court's or Judge's orders

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Mr.A.A.Kumbhakoni for the Applicants
Mr.S.S.Shah for Respondent Nos.1-F to 1-L.
Mr.A.M.Khairadi for Respondent No.1(a).

CORAM: A.S.OKA, J.

DATED: AUGUST 11, 2004.

P.C.:

1. Heard the Counsel appearing for the parties. Heard Shri Kumbhakoni for the Applicants, Shri Shah for the Respondent Nos.1-F to 1-L and Shri Khairadi for Respondent No.1-A. This Application is for setting aside the conditional order of 19th December 1982 passed by the Additional Registrar. This Application is opposed by the Shri Shah and Shri Khairadi appearing for the Respondents.

2. The prayer in this Application is also for recalling the order dated 10th April 2003 passed by this Court. In order dated 10th April 2003 reference has been made to the order dated 19th February 1982 passed by the learned Additional Registrar by which the Appeal was dismissed for non prosecution as against the Respondent No.1-B. The reference has also been made to the conditional order passed on 19th August 2002 by which the Appeal has been dismissed as against the Respondent No.1(i) to 1(iii) for want of service. Similarly, the Appeal was dismissed as against the Respondent Nos. 2 and 3 as per the order dated 21st November 1980 passed by the Additional Registrar.

3. In paragraph No.7 of this Civil Application the Applicants have stated that they have no claim as against the Respondent No.1-B. Therefore, the prayer is made in this Civil Application for deleting name of the Respondent No.1-B.

4. In view of the orders passed in other Civil Applications it may be necessary to

recall the order dated 10th April 2003.

5. There is some justification in opposition by the learned Counsel appearing for the Respondents. However, I find that the Applicants/Appellants should not be allowed to suffer because of the technical lapses in prosecuting the Second Appeal. The prejudice which may be caused to the contesting Respondents by restoration of the Second Appeal can be compensated by order the payment of costs and by taking the Second Appeal for hearing immediately.

6. Hence the Civil Application is allowed in terms of prayer clauses (B) to (E). The Applicants are directed to pay costs of Rs.1000/- to the Respondent Nos. 1-A and costs of Rs.1000/- to Respondent Nos.1-F to 1-L. The amount of costs shall be paid within six weeks from today.

Judge.